UNITED
NATIONS

A S

General Assembly Security Council

Distr.
GENERAL

A/48/169
S/25787
17 May 1993

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Item 79 of the preliminary list*
REVIEW OF THE IMPLEMENTATION OF THE
DECLARATION ON THE STRENGTHENING
OF INTERNATIONAL SECURITY

SECURITY COUNCIL
Forty-eighth year

Letter dated 17 May 1993 from the Chargé d'affaires a.i.
of the Permanent Mission of Yugoslavia to the United
Nations addressed to the Secretary-General

I have the honour to transmit herewith the Declaration on the peace plan for former Bosnia and Herzegovina, adopted on 14 May 1993 by the deputies in the Assembly of the Federal Republic of Yugoslavia and the Assemblies of the Republic of Serbia and the Republic of Montenegro (see annex).

I should be grateful if you would have the present letter and its annex circulated as an official document of the forty-seventh session of the General Assembly, under agenda item 79, and of the Security Council.

(Signed) Dragomir DJOKIC
Ambassador
Chargé d'affaires a.i.

* A/48/50.

ANNEX

Declaration on the peace plan for former Bosnia and Herzegovina, adopted by the deputies in the Assembly of the Federal Republic of Yugoslavia and the Assemblies of Serbia and Montenegro on 14 May 1993

Proceeding from the lasting option for peace and the readiness to solve all outstanding issues through negotiations and agreements,

Confident that the issue of the peace plan is of utmost importance, not only for the Serb people in former Bosnia and Herzegovina, but also for Serbia, Montenegro, Krajina and the entire Serb people,

In view of the fact that the decision on the peace plan is also the decision on the interests of citizens of the Federal Republic of Yugoslavia and the Serb people as a whole,

Being obliged to express the political will of the citizens we represent gathered at the Joint Session of Peoples' Deputies in the Assemblies of the Federal Republic of Yugoslavia, the Republic of Serbia and the Republic of Montenegro,

We adopt the following declaration:

We particularly appreciate the fact that during the negotiations, by subsequent modifications and clarifications, the plan provides mechanisms for the protection and safety of the Serb people outside the Serb provinces, including local police, which must reflect local national structure, as well as its influence on the choice of countries which will contribute to the United Nations peace-keeping force.

We believe that, on the basis of the existing mechanisms in the peace plan, through further direct negotiations and through direct decision-making by the population in the territories under dispute, it is possible to ensure the realization of legitimate aspirations for the fair corrections of the provincial maps, which will enable, with due respect for the real state of affairs and ethnic structure, territorial links between the Serb provinces.

We particularly support the request that parts in which genocide was committed against the Serb population in past wars and which are inseparable parts of the conscience and traditions of the Serb people be included in the Serb provinces.

We express our regret that the Assembly of the Serbian Republic did not take into account the position of the Federal Republic of Yugoslavia concerning the peace plan, in disregard for vital interests of the peoples of Serbia and Montenegro.

We consider that the decision on the referendum of the Serb people in Bosnia and Herzegovina is untimely and unthoughtful. A referendum in the conditions of ongoing civil war in Bosnia and Herzegovina cannot be an

expression of will by all citizens in these territories and, therefore, cannot reflect the genuine interests of the Serb people. Ever more so since the determination of the Serb people in Bosnia and Herzegovina was and still remains that the equality of members of all nations living there is to be guaranteed. The right to take a decision on such a crucial issue as the issue of peace, whose consequences are the concern of all, not only of a smaller part of the Serb people, cannot be claimed by any one.

Deeply concerned about further possible escalation of the conflict, war devastation and loss of human lives, we call upon the Serb people in Bosnia and Herzegovina to opt for the acceptance of the peace plan and to struggle further for its national and State emancipation through negotiations, using the political rights and means contained in the peace plan for Bosnia and Herzegovina.

Citizens of the Serbian Republic,

Acceptance of the peace plan does not mean abandoning the realization of vital national and State interests and rights of the Serb people. But a decision that is to be made on peace and the interests and rights of the Serb people, on the basis of the proposed plan in this historical stage, can be realized more successfully through negotiations in conditions of peace.

We believe that you are aware of our brotherly solidarity and of our great sacrifices. Even now we are on your side, since peace is the vital interest of the Serb people in Bosnia and Herzegovina, Serbia and Montenegro and of the entire Serb and Montenegrin peoples. It is only in peace that vital and historical interests can be realized. Now, when peace is in prospect and the essential goals of your struggle have been achieved, we cannot understand that you endanger the interests of the Federal Republic of Yugoslavia and the entire Serb people by rejecting the peace plan.

The goals of the struggle to achieve these vital interests are not in question even today, but the option to continue this struggle in peace, to preserve freedom, equality and all that has been achieved, primarily to preserve the people. If at this moment the name of peace is the peace plan offered under the auspices of the international community, then peace should be chosen and the offered peace plan accepted. Such an option is an expression of the unified interests of the Serb and Montenegrin peoples, and, therefore, the peoples' deputies and all citizens of the Serbian Republic should take such a decision.

UNITED
NATIONS

A S

General Assembly Security Council

Distr.
GENERAL

A/48/170
S/25801
19 May 1993

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Item 146 of the preliminary list*
REPORT OF THE INTERNATIONAL LAW
COMMISSION ON THE WORK OF ITS
FORTY-FIFTH SESSION

SECURITY COUNCIL
Forty-eighth year

Letter dated 19 May 1993 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the letter from His Excellency Mr. Vladislav Jovanović, Deputy Prime Minister and Minister for Foreign Affairs of the Federal Republic of Yugoslavia, addressed to you (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as an official document of the General Assembly, under item 146 of the preliminary list, and of the Security Council.

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

* A/48/50.

ANNEX

Letter dated 17 May 1993 from the Deputy Prime Minister and Minister for Foreign Affairs of the Federal Republic of Yugoslavia to the Secretary-General

Following your report of 3 May 1993 (S/25704) relating to paragraph 2 of Security Council resolution 808 (1993) of 22 February 1993, I am writing to apprise you of the position of the Yugoslav Government.

The establishment of an ad hoc international tribunal by the Security Council for the prosecution of persons responsible for grave breaches of international humanitarian law committed in the territory of the former Yugoslavia since 1991 is a precedent in international law and the work of the United Nations.

Yugoslavia considers that all perpetrators of war crimes committed in the territory of the former Yugoslavia should be prosecuted and punished under national laws, which are harmonized with international law and by competent judicial authorities, in accordance with the principle of territorial jurisdiction.

Since Yugoslavia has already accepted the jurisdiction of international commissions for the investigation of war crimes, which has not been the case with other States, this constitutes additional pressure by the international community on the work of its national judicial authorities engaged in the prosecution and punishment of perpetrators of war crimes.

Yugoslavia is one of the advocates of the idea concerning the establishment of a permanent international tribunal and respect for the principle of equality of States and universality and considers, therefore, the attempts to establish an ad hoc tribunal discriminatory, particularly in view of the fact that grave breaches of international law of war and humanitarian law have been committed and are still being committed in many armed conflicts in the world, whose perpetrators have not been prosecuted or punished by the international community (Democratic People's Republic of Korea, Viet Nam, Algeria, Cambodia, Lebanon, Afghanistan, the Belgian Congo, Iraq, Panama etc.). War crimes are not committed in the territory of one State alone and are not subject to the statute of limitations, so that the selective approach to the former Yugoslavia is all the more difficult to understand and is contrary to the principle of universality.

Yugoslavia has its doubts about the impartiality of the ad hoc tribunal, particularly because of the one-sided approach of the United Nations Security Council to the responsibility for armed conflicts in the territory of the former Yugoslavia and the fact that numerous initiators and advocates of the idea of its establishment have openly stated that this was going to be a tribunal for Serbs. Besides, reports of various international commissions investigating war crimes are biased and unsubstantiated.

In view of the fact that, under the Charter of the United Nations, the Security Council has no mandate to set up such a tribunal or to adopt its statute, it is quite legitimate to question the legal basis for the establishment of the ad hoc tribunal. This is borne out by the opinions of many States and a number of draft tribunal statutes, including the draft of the Conference on Security and Cooperation in Europe (CSCE), to the effect that such a tribunal could be established only by a convention or as a result of decisive influence of the United Nations General Assembly.

In the report by the Secretary-General of 3 May 1993, submitted under paragraph 2 of Security Council resolution 808 (1993), it is said that the international tribunal has been set up on the basis of Chapter VII and Article 29 of the United Nations Charter (S/25704, sect. I).

Yugoslavia wishes to reiterate that the Security Council has no mandate to establish an international tribunal, nor does Chapter VII of the United Nations Charter provide for the establishment of that tribunal. Invocation of Article 29 of the United Nations Charter is legally unfounded and arbitrary, since Article 29 only provides that the Security Council may establish subsidiary organs as it deems necessary for the performance of its functions. It is obvious that such a tribunal is not a subsidiary organ of the Security Council. No independent tribunal, particularly an international tribunal, can be a subsidiary organ of any body, including the Security Council.

The ongoing drive to establish an international tribunal is politically motivated and without precedent in international legal practice, so much so since members of the international community have not been able to agree on the establishment and statute of an international criminal court for decades. The proposed statute of the international tribunal is inconsistent and replete with legal lacunae to the extent that makes it unacceptable to any State cherishing its sovereignty and dignity.

I would like to recall that the international community has held Yugoslav criminal legislation and its judiciary in very high esteem, inter alia, because it has adopted all solutions and achievements of modern criminal law and all international conventions pertaining to international humanitarian law.

The establishment of an ad hoc tribunal is also contrary to the provisions of the Constitution of the Federal Republic of Yugoslavia, which prohibits extradition of Yugoslav nationals. Yugoslavia is not convinced of the need that it alone should amend its constitutional provisions pertaining to extradition, which are otherwise contained in appropriate legal documents of other States as well, even less so if the same obligation is not provided also for other members of the international community.

Yugoslavia is a signatory State of all international conventions in the field of international humanitarian law, its legislation is in full harmony with the provisions of those conventions and it is prepared to comply fully with its international commitments under these conventions.

In advising you of the remarks of the Federal Government on the proposals contained in your report, I wish to inform you that any decision of the Security Council on this issue related to Yugoslavia will have to be approved by the Parliament of the Federal Republic of Yugoslavia as the supreme authority under its Constitution.

UNITED
NATIONS

A S

General Assembly Security Council

Distr.
GENERAL

A/48/170*
S/25801*
21 May 1993

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Forty-eighth session
Item 146 of the preliminary list**
REPORT OF THE INTERNATIONAL LAW
COMMISSION ON THE WORK OF ITS
FORTY-FIFTH SESSION

SECURITY COUNCIL
Forty-eighth year

Letter dated 19 May 1993 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the letter from His Excellency Mr. Vladislav Jovanović, Deputy Prime Minister and Minister for Foreign Affairs of the Federal Republic of Yugoslavia, addressed to you (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as an official document of the General Assembly, under item 146 of the preliminary list, and of the Security Council.

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

---

* Reissued for technical reasons.

** A/48/50.

ANNEX

Letter dated 17 May 1993 from the Deputy Prime Minister and Minister for Foreign Affairs of the Federal Republic of Yugoslavia to the Secretary-General

Following your report of 3 May 1993 (S/25704) relating to paragraph 2 of Security Council resolution 808 (1993) of 22 February 1993, I am writing to apprise you of the position of the Yugoslav Government.

The establishment of an ad hoc international tribunal by the Security Council for the prosecution of persons responsible for grave breaches of international humanitarian law committed in the territory of the former Yugoslavia since 1991 is a precedent in international law and the work of the United Nations.

Yugoslavia considers that all perpetrators of war crimes committed in the territory of the former Yugoslavia should be prosecuted and punished under national laws, which are harmonized with international law and by competent judicial authorities, in accordance with the principle of territorial jurisdiction.

Since Yugoslavia has already accepted the jurisdiction of international commissions for the investigation of war crimes, which has not been the case with other States, this constitutes additional pressure by the international community on the work of its national judicial authorities engaged in the prosecution and punishment of perpetrators of war crimes.

Yugoslavia is one of the advocates of the idea concerning the establishment of a permanent international tribunal and respect for the principle of equality of States and universality and considers, therefore, the attempts to establish an ad hoc tribunal discriminatory, particularly in view of the fact that grave breaches of international law of war and humanitarian law have been committed and are still being committed in many armed conflicts in the world, whose perpetrators have not been prosecuted or punished by the international community (Korea, Viet Nam, Algeria, Cambodia, Lebanon, Afghanistan, the Belgian Congo, Iraq, Panama etc.). War crimes are not committed in the territory of one State alone and are not subject to the statute of limitations, so that the selective approach to the former Yugoslavia is all the more difficult to understand and is contrary to the principle of universality.

Yugoslavia has its doubts about the impartiality of the ad hoc tribunal, particularly because of the one-sided approach of the United Nations Security Council to the responsibility for armed conflicts in the territory of the former Yugoslavia and the fact that numerous initiators and advocates of the idea of its establishment have openly stated that this was going to be a tribunal for Serbs. Besides, reports of various international commissions investigating war crimes are biased and unsubstantiated.

In view of the fact that, under the Charter of the United Nations, the Security Council has no mandate to set up such a tribunal or to adopt its statute, it is quite legitimate to question the legal basis for the establishment of the ad hoc tribunal. This is borne out by the opinions of many States and a number of draft tribunal statutes, including the draft of the Conference on Security and Cooperation in Europe (CSCE), to the effect that such a tribunal could be established only by a convention or as a result of decisive influence of the United Nations General Assembly.

In the report by the Secretary-General of 3 May 1993, submitted under paragraph 2 of Security Council resolution 808 (1993), it is said that the international tribunal has been set up on the basis of Chapter VII and Article 29 of the United Nations Charter (S/25704, sect. I).

Yugoslavia wishes to reiterate that the Security Council has no mandate to establish an international tribunal, nor does Chapter VII of the United Nations Charter provide for the establishment of that tribunal. Invocation of Article 29 of the United Nations Charter is legally unfounded and arbitrary, since Article 29 only provides that the Security Council may establish subsidiary organs as it deems necessary for the performance of its functions. It is obvious that such a tribunal is not a subsidiary organ of the Security Council. No independent tribunal, particularly an international tribunal, can be a subsidiary organ of any body, including the Security Council.

The ongoing drive to establish an international tribunal is politically motivated and without precedent in international legal practice, so much so since members of the international community have not been able to agree on the establishment and statute of an international criminal court for decades. The proposed statute of the international tribunal is inconsistent and replete with legal lacunae to the extent that makes it unacceptable to any State cherishing its sovereignty and dignity.

I would like to recall that the international community has held Yugoslav criminal legislation and its judiciary in very high esteem, inter alia, because it has adopted all solutions and achievements of modern criminal law and all international conventions pertaining to international humanitarian law.

The establishment of an ad hoc tribunal is also contrary to the provisions of the Constitution of the Federal Republic of Yugoslavia, which prohibits extradition of Yugoslav nationals. Yugoslavia is not convinced of the need that it alone should amend its constitutional provisions pertaining to extradition, which are otherwise contained in appropriate legal documents of other States as well, even less so if the same obligation is not provided also for other members of the international community.

Yugoslavia is a signatory State of all international conventions in the field of international humanitarian law, its legislation is in full harmony with the provisions of those conventions and it is prepared to comply fully with its international commitments under these conventions.

In advising you of the remarks of the Federal Government on the proposals contained in your report, I wish to inform you that any decision of the Security Council on this issue related to Yugoslavia will have to be approved by the Parliament of the Federal Republic of Yugoslavia as the supreme authority under its Constitution.